Items for Public Comment to the Proposed 2 CFR 200 Revisions

For the purposes of our review we used the track changes document provided here:
https://www.performance.gov/CAP/innovation-sessions/Grants-CAP-Goal-Proposed-2CFR-Revision1.pdf

All page (pg) references mean the PDF page, not necessarily the page number listed within the document.

Pg 69 – [200.1] Improper payment definition removed and referencing OMB Circular A-123 Appendix C

Position on Change: *A codification document should be comprehensive; references to external documents create confusion for the implementation of grant agreements by smaller non-federal entities.* Furthermore, it is not clear if the entire appendix is being referenced or solely the improper payment definition that ignores the other definitions provided as well as the defined significant improper payments.

https://www.whitehouse.gov/wp-content/uploads/2018/06/M-18-20.pdf

Pg 72-73 – [200.1] Removal of micro-purchase thresholds to be revised upon request and not follow standardized guidelines

Position on Change: *Set a static micro-purchase threshold.* Failure to define a set threshold will create confusion for the implementation of grant agreements by smaller non-federal entities. Additionally, use of "cognizant agency" is not adequately used. A non-federal entity may have multiple Federal granting agencies which could approve differing higher thresholds without being aware of who the cognizant agency may be. Furthermore, if multiple higher thresholds are granted, it will further complicate implementation for pass through entities. e.g. two different state agencies may pass-through funds to one local entity and both of those state agencies may be working with funds from one Federal agency but have differing thresholds on the micro-purchase thresholds.

Pg 74 – [200.1] Removal of definition of obligations

Position on Change: *Rather than remove the definition of an obligation, please clarify the meaning.* The use of the term "obligation" is unlikely to not be used e.g. unliquidated financial obligations and unobligated balance remain in the definitions. Please clarify the need to delete this term.

Pg 77 – [200.1] Thresholds differ from the FAR but remain undefined and allow for the NFE to determine the appropriate simplified acquisition threshold which places an unnecessary burden on use as a PTE

Position on Change: *Set a static micro-purchase threshold. A codification document should be comprehensive, references to external documents create confusion for the implementation of grant agreements by smaller non-federal entities.* Many non-federal entities have since 2014 implemented using the simplified acquisition threshold that was previously stated in 2 CFR 200 making this change is likely to not create efficiencies in the implementation of federal regulations.

Advantages to raising the threshold: raising the static threshold would be beneficial for many subrecipients by reducing the level of effort needed to procure goods or services. The revised threshold should consider that there are few, if any, purchases that would fall below the current

threshold. A higher threshold is needed; however, the current proposed implementation would create variations among federal agencies and could result in complicated measures to ensure compliance; increase questioned costs; and possible disallowed costs of our subrecipients when they attempt to properly comply with the federal regulations.

Pg 84 – [200.102 (d)] incorrectly uses word "apple" instead of "apply"

"OMB also encourages agencies to ***apple*** *more restrictive terms and conditions when a risk-assessment indicates it may be merited."*

Pg 94 – [200.211 (a)] change from may to must but fails to define more than one instance to which the regulation applies.

Position on Change: *The proposed changes do not offer clarification to the applicability of what instances the requirement must apply.* The regulation says, "where applicable", but does not define situations in which the requirement is applicable. Furthermore, language such as "in some instances" included in the regulation does not define how or what a particular instance may warrant the requirement.

Pg 103 – [200.305(b) (10)] Directing funds to the original Federal agency payment system

Position on Change: *HUD which administers CDBG funding does not have published instructions for returns of interest earned.* Furthermore, clarification would be beneficial in this instance to define the non-federal entity at the pass-through entity level or subrecipient level.

Pg 110 – [200.309] Period of Performance removal

Position on Change: *The period of performance removal does not add clarity to the federal regulations but creates a gap in understanding how to determine a period of performance*. A codification document should be comprehensive, references to external documents create confusion for the implementation of grant agreements by smaller non-federal entities.

Pg 118 – [200.319 (a)] Informal procurement methods

Position on Change: *The use of the wording 'informal procurement methods may lead entities to believe that the informal nature does not require documentation to prove compliance.* Many entities already struggle to meet compliance standards for formalized processes. Using the term "informal" this may cause failure by at-risk entities to comply required documentation standards thus subjecting them to disallowed costs for failure to meet the and the standards of free and open competition. Removal of the thresholds and definitions will force non-federal entities to render a decision that may differ between pass-through agencies and is an unnecessary, increased burden. In addition, the changes should not use the terms 'acquisition' and 'property' as these terms are also used in the Uniform Relocation Act and thus could be confusing.

Pg 120 – [200.319(b) (3)] Noncompetitive

Position on Change: *Additional clarification is needed.* While federal requirements say one or more, the granting agency currently interprets this as demonstrating that competition has been thoroughly vetted with multiple attempts to solicit and includes authorization by the non-Federal entity. Does the use of

noncompetitive procurement need to be pre-determined? Must an non-federal entity demonstrate that it did not limit free and open competition to be an allowable noncompetitive procurement?

Pg 121 – [200.321] Domestic preferences for procurements.

Does not state how this is done from the standpoint of being included in the procurement process.

Position on Change: *There is no qualitative requirement that can be monitored to guarantee this is being followed.* Additionally, it would be better included in 2 CFR 200 Appendix II as a contractual provision assuming there is statutory authority. Furthermore, clarification or stronger verbiage is needed to differentiate this requirement so that this provision will not override existing regulations prohibiting geographic preference in competitive procurement methodologies.

Pg 128 – [200.331(d)(4)] The pass-through entity is only responsible for resolving audit findings specifically related to the subaward and not applicable to the entire subrecipient.

Position on Change: *Clarification is needed that we would need to issue management decisions specific to the subaward.* Audit findings are the result of financial compliance auditing in accordance with GAAS and GAAP. Many compliance monitoring shops are not equipped with financial statement auditors to the extent that they would be able to monitor the financial statements and resolve these findings. Clarification is needed that we may continue to sustain our decisions and review the subsequent year's audit for clearance of audit findings.